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SUPREME COURT OF THE UNITED STATES

**OCTOBER TERM, 1948**

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# No. 82

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JOHN H. CRINER AND MARY E. CRINER,
*Petitioners,*

*vs.*

V. S. PARHAM, R. G. LAWTON, T. W. LEE, R. W. BURNETT AND CHRYSTELLE PARTEE,
*Respondents*

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## PETITION FOR WRIT OF CERTIORARI

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MAY IT PLEASE THE COURT:

The petition of John H. and Mary E. Criner respectfully shows to this Honorable Court:

(A)

**Summary Statement of the Matter Involved**

A decree of the Ouachita County, Arkansas Chancery Court, Second Division, dated December 17, 1946, found and decreed that John H. Criner was the owner of approximately sixty (60) acres of land, situated in Ouachita County, Arkansas, by virtue of a deed to a part of the

land and adverse possession of all the land for more than seven years prior to the bringing of the suit against him in the aforesaid court (R. 231).

Mary E. Criner is the wife of John H. Criner, who was married to him in 1894 (R. 59).

This suit against John H. Criner and wife was originally instituted by J. C. Ritchie, et al., in the aforesaid court on the 6th day of November, 1945 (R. 2). On May 15, 1946, in open court, the Intervention of Respondents, V. S. Parham, R. G. Lawton, T. W. Lee, R. W. Burnett and Chrystelle Partee, was filed. The Intervention claimed that Respondents had purchased from the plaintiffs on the 6th day of September, 1945, one-half the royalty or 1/16th of the oil, gas, and other minerals in, on, and under the lands described in plaintiffs' complaint. Respondents adopted plaintiffs' complaint and further alleged that they purchased the royalty and mineral interest in good faith and for value without notice, either actual or constructive of the defendants' claim or interest herein (R. 9). After the filing of various pleadings, the defendants (Petitioners here), filed their amended and substituted answer to plaintiffs' complaint, which joined the issues as between J. C. Ritchie, et al., (plaintiffs) and John H. and Mary E. Criner, (defendants) Petitioners herein (R. 12). On December 16, 1946, Petitioners filed their answer to the Intervention of V. S. Parham, et al., (Respondents herein), which joined the issues as between Petitioners and Respondents herein (R. 24).

The trial of the issues on the above-mentioned pleadings resulted in the decree, supra, finding and decreeing that John H. Criner was the owner of the land in controversy as against the plaintiffs, J. C. Ritchie, et al. (R. 231). The decree of the court, however, found that V. S. Parham was an innocent purchaser for value and without notice of an interest in the oil, gas, and minerals under said lands claimed

by John H. and Mary E. Criner, and that the grantees of V. S. Parham, et ux, namely: R. G. Lawton, T. W. Lee, R. W. Burnett and Chrystelle Partee, were innocent purchasers for value without notice, and that the said V. S. Parham and his grantees were entitled to have their title to the one-half royalty interest quieted and confirmed as against John H. and Mary E. Criner (R. 234). The court entered order, judgment and decree upon the findings as above set forth (R. 235).

In due time, defendants, Petitioners here, appealed to the Supreme Court of Arkansas from that part of the judgment and decree of the Ouachita County, Arkansas Chancery Court, Second Division, finding and ordering that V. S. Parham, et al., Respondents herein, were innocent purchasers for value and without notice. J. C. Ritchie, et al., (plaintiffs below) also appealed from the holding and judgment of said Chancery Court that John H. Criner was the owner of the land in controversy (R. 257). The hearing in the Supreme Court of Arkansas resulted in the affirmance, in its entirety, of the judgment and decree of the said Chancery Court (R. 258).

This Petition seeks to bring to this Court by Writ of Certiorari, only that part of the judgment of the Ouachita County, Arkansas Chancery Court, and the judgment of the Supreme Court of Arkansas which adjudicates the issues as between John H. and Mary E. Criner, Petitioners herein, and (Interveners below) V. S. Parham, R. G. Lawton, T. W. Lee, R. W. Burnett and Chrystelle Partee, Respondents here. The greater part of the record containing 381 pages, pertains to the issues as between J. C. Ritchie, et al. (the original plaintiffs) and John H. and Mary E. Criner, Petitioners herein (the original defendants).

In compliance with Rule 38 (8) of this Court, we have attempted to omit from the printed record, by stipulation, that part of the record which pertains to the issues as be-

tween the original plaintiffs and the original defendants. We are sending up with the record, the original stipulation to omit from the printed record, matters unessential, in order that this Court may see what the stipulation contains, which stipulation counsel for Respondents have refused to sign. However, the Court will notice in reading the record, that it would be impracticable to completely exclude from the record, all reference to the issues as between the original plaintiffs and the original defendants.

The question posed as between Petitioners and Respondents brings up for adjudication, the effect of a disclaimer of title executed by John H. Criner in 1938, but not signed by Mary E. Criner, his wife (R. 156); two visits said to have been made by Respondent, V. S. Parham, to the John H. Criner home, located upon the land in controversy, and the talks Parham had with Criner on the two occasions (R. 128-137). The Respondent, V. S. Parham, was accompanied by Smead Stewart on these alleged two visits to the John H. Criner home (R. 140).

(B)

**Reasons Relied upon for Allowance of the Writ**

1. The decree of the Ouachita County, Arkansas Chancery Court, Second Division, found that Petitioner, John H. Criner, was the owner of the land in controversy, and that Mary E. Criner was his wife.

2. The burden of proof was upon respondents, V. S. Parham, et al., to prove they were innocent purchasers for value and without notice of the claim of ownership of John H. and Mary E. Criner, to the royalty and mineral interest purchased from J. C. Ritchie, et al.

3. The burden of proof was upon respondents, V. S. Parham, et al., to prove acts and conduct on the part of

John H. and Mary E. Criner or either of them, which would constitute an estoppel against them or either of them.

4. There is no substantial evidence in the record that respondents purchased the royalty and mineral interest for value and without notice, either actual or constructive, of John H. and Mary E. Criner's claim, and the judgments and decrees of the courts below so holding, are arbitrary and capricious.

5. There is no substantial evidence in the record of acts and conduct on the part of John H. and Mary E. Criner, or either of them, that would constitute an estoppel against them, or either of them, in favor of respondents, and the judgments and decisions of the courts below so holding, are arbitrary and capricious.

6. The judgments and decisions of the courts below deprive the Petitioner, Mary E. Criner, of the benefits of her rights under the dower and homestead Statutes of the State of Arkansas.

7. The judgments and decisions of the courts below deprive Petitioners of their rights and benefits under the Constitution of the State of Arkansas (Art. 9, Sec. 3), and is discriminatory for that reason.

8. John H. and Mary E. Criner are Negroes. At the time of the trial of this cause in the Ouchita County Chancery Court, Second Division, John H. Criner, a Baptist Preacher, was 75 years of age. By reason of the trial court and the Supreme Court completely disregarding the Criner testimony and accepting the testimony of V. S. Parham and his witness, Smead Stewart, the property of John H. and Mary E. Criner has been taken from them without due process of law and in complete disregard to the equal protection clauses of the 14th Amendment to the Constitution of the United States. The state courts have discriminated against

John H. and Mary E. Criner because of their color, and have accepted the testimony of V. S. Parham and Smead Stewart for that reason, although the deed from J. C. Ritchie, et al., to V. S. Parham, and the deeds from V. S. Parham et ux. to their grantees were dated September 6, 1945, and filed for record at 4:50 p.m., that day (Sept. 6, 1945) in the Clerk's Office of Ouchita County, Arkansas, before V. S. Parham and Smead Stewart went to see John H. and Mary E. Criner and before the alleged conversations which they say they had with Criner in which they have Criner saying he was a tenant of the Ritchies, took place, John Criner at that very time being in possession, and had been in possession for more than 50 years.

WHEREFORE, your Petitioners respectfully pray that a Writ of Certiorari be issued out of and under the seal of this Honorable Court, directed to the Supreme Court of Arkansas, commanding that court to certify and to send to this Court for its review and consideration on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the Case Numbered and entitled on its Docket, No. 8235, John H. Criner and Mary E. Criner, Appellants, vs. V. S. Parham, et al., Appellees, and that the said decree of the Ouachita County, Arkansas Chancery Court, Second Division, and the judgment of the Supreme Court of Arkansas, to be reversed by this Honorable Court insofar as said judgments hold that Respondents are innocent purchasers for value without notice, and that Petitioners are estopped from claiming the undivided one-half royalty interest awarded Respondents and now claimed by them, under this 60 acres involved herein; that the discrimination against John H. and Mary E. Criner because they are Negroes, be condemned and that they be decreed the owners of the remaining one-half royalty interest to

which they, under the Laws of God and the statutes of man, are entitled.

JOHN H. and MARY E. CRINER,
By C. M. MARTIN,
*Camden, Arkansas;*
HENRY B. WHITLEY,
*Magnolia, Arkansas;*
J. R. WILSON,
*El Dorado, Arkansas,*
*Counsel for Petitioners.*

Per J. R. WILSON,
*Of Counsel.*

SUPREME COURT OF THE UNITED STATES

**OCTOBER TERM, 1948**

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# No. 82

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JOHN H. CRINER AND MARY E. CRINER,
*Petitioners,*

*vs.*

V. S. PARHAM, R. G. LAWTON, T. W. LEE, R. W. BURNETT, AND CHRYSTELLE PARTEE,
*Respondents*

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## BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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### I

### The Opinion of the Court Below

The opinion of the Supreme Court of Arkansas, in this case, has not been officially reported at this time. The opinion was dated January 26, 1948 (R. —).

### II

### Jurisdiction

1. Petition for re-hearing in this cause was denied by the Supreme Court of Arkansas on March 8, 1948 (R. 269).

2. By petition for re-hearing, filed in due time, in the Supreme Court of Arkansas, the claim was made that the Courts found that V. S. Parham directed the bank to pay the draft before John H. Criner refused to sign a disclaimer or a quitclaim deed, which was not supported by any evidence in the record (R. 265). The claim was also made in the petition for a rehearing that Mary E. Criner was held to be estopped, when the undisputed evidence showed that she had nothing to do with the transaction and knew nothing about it, until after the transaction was complete (R. 63). In the petition for rehearing, it was also set up, that Mary E. Criner had been deprived of her dower rights, under the Statutes of Arkansas, when the undisputed evidence disclosed no act on her part to estop her (R. 267). The claim was made in the petition for a rehearing that John H. Criner was held to be estopped, when the undisputed evidence disclosed that he did not know a transaction concerning the land was pending between V. S. Parham and J. C. Ritchie, et al. (R. 267). Finally, the petition for a rehearing claimed that petitioners, John H. Criner and Mary E. Criner, had been deprived of their property without due process of law, as guaranteed by the 14th Amendment to the Constitution of the United States, as they and each of them, were held to be estopped from claiming and recovering the one-half royalty interest, purchased by V. S. Parham from J. C. Ritchie, et al., and the title divesting out of them, without any substantial evidence of action on their part, or on the part of either, sufficient to constitute an estoppel (R. 267-8). The Supreme Court of Arkansas denied all of the constitutional claims without comment (R. 269).

3. Jurisdiction by this Court is invoked under the authority of Section 237 of the Judicial Code, as amended, subparagraph (b), on the ground that there is specially set up and claimed by petitioners, a right, as set forth in the 14th Amendment thereof.

4. It is believed that the following cases sustain the jurisdiction of this Court:

(a) As to the proposition, that there is no substantial evidence upon which to base the judgment of the courts below:

*Interstate Amusement Co.* v. *Albert,* 239 U. S. 560, 60 L. Ed. 439, 36 Sup. Ct. 168;

*Postal Telegram-Cable Company* v. *City of Newport, Kentucky,* 247 U. S. 464, 62 L. Ed. 1215, 38 Sup. Ct. 566.

(b) As to the proposition of the denial of the application of the State Constitution and Statutes:

*Neal* v. *Delaware,* 103 U. S. 370, 26 L. Ed. 567;

*Yick Wo* v. *Hopkins,* 118 U. S. 356, 30 L. Ed. 220, 6 Sup. Ct. 1064;

*Home Telep. & Teleg.* v. *Los Angeles,* 227 U. S. 278, 60 L. Ed. 510, 33 Sup. Ct. 402;

*Cuyahoga River Power Co.* v. *Akron,* 240 U. S. 462, 60 L. Ed. 743, 36 Sup. Ct. 402;

*Iowa-Des Moines National Bank* v. *Bennett,* 284 U. S. 239, 76 L. Ed. 265.

(c) As to the proposition of when the Federal questions were first raised:

*Saunders* v. *Shaw,* 244 U. S. 317, 61 L. Ed. 1163, 37 Sup. Ct. 638.

## III

### Statement of the Case

In the summary statement of the petition, the statement was made that the question posed as between petitioners and respondents brings up for adjudication the effect of a disclaimer of title executed by John H. Criner in 1938, and the talks V. S. Parham had with John H. Criner on the occa-

sions of two visits made by V. S. Parham to the home of John H. Criner, which was located upon the land in controversy.

In his finding of facts, the trial court based his holding that respondents were innocent purchasers for value without notice, upon the effect of the disclaimer of title executed by John H. Criner in 1938 (R. 155). The trial court did not give any weight to the testimony as to the talks V. S. Parham had with John H. Criner, but was inclined to question the effect of the disclaimer because of the information Parham had gained by talking with Criner (R. 155).

However, upon appeal, the Supreme Court of Arkansas held that John H. Criner told V. S. Parham that the land was owned by the Ritchies but that he was merely a tenant, which misled Parham (R. 261). The Supreme Court of Arkansas further held that during the time of the discussion between Parham and Criner, the Ritchies had drawn a draft on Parham in payment for the royalty, and Parham directed the bank to pay the draft after considering the information furnished by the disclaimer of title and what Criner had said regarding tenancy (R. 261). The Supreme Court of Arkansas further held that Criner first agreed to execute the disclaimer of title if given assurance that he would not be disturbed in possession *as tenant,* during the remainder of his life, and that payment of $50.00 be made (R. 261).

It is the contention of petitioners that the undisputed evidence does not support the findings of fact by the trial court, nor the findings and holdings of the Supreme Court of Arkansas. The disclaimer of title executed by John H. Criner in 1938, and the talks had by V. S. Parham with John H. Criner, is all the evidence upon which the trial court, and the Supreme Court of Arkansas, based the judgment and decree divesting John H. Criner of the title to one-half of the royalty in, on and under the land in controversy.

Respondents have refused to stipulate to omit from the printed record any part of the record as furnished by the Clerk of the Supreme Court of Arkansas. Petitioners herein raised the questions that the findings and holdings of the Courts below are not supported by any substantial evidence, which will involve a consideration of only the disclaimer, the testimony of V. S. Parham, a respondent, Smead Stewart, who accompanied Parham on the occasions of Parham's visits to, and talks with, John H. Criner, and the testimony of Thomas Gaughan, who was the attorney for J. C. Ritchie, et al., and who furnished V. S. Parham with the information of the disclaimer. Because of the volume of the record, as all of it must be printed, petitioners annex hereto, as appendix I, the full text of the disclaimer, the complete testimony of the witnesses, V. S. Parham, Smead Stewart and Thomas Gaughan, so that this Court will not have to refer to the voluminous record in considering the petition herein presented.

## IV

### Specification of Errors

1. The Ouachita County, Arkansas, Chancery Court, Second Division, and the Supreme Court of Arkansas, erred in finding and holding that the respondents, V. S. Parham, et al., were innocent purchasers for value and without notice, of a one-half royalty interest, because of the execution of the disclaimer of title by John H. Criner in 1938.

2. The Ouachita County, Arkansas, Chancery Court, Second Division, erred in ignoring the rights of Mary E. Criner under the dower Statutes of Arkansas.

3. The Ouachita County, Arkansas, Chancery Court, Second Division, and the Supreme Court of Arkansas, erred in holding that the land in controversy was subject to the

decree of either court, and thereby denied to petitioners the benefits of the Constitution of the State of Arkansas.

4. The Supreme Court of Arkansas erred in holding that John H. Criner told V. S. Parham that he (Criner) was a tenant of the Ritchies.

5. The Supreme Court of Arkansas erred in holding that V. S. Parham directed the bank to pay the draft drawn by the Ritchies before John H. Criner refused to execute a disclaimer of title or a quitclaim deed to the land in controversy.

6. The Ouachita County, Arkansas, Chancery Court, Second Division, and the Supreme Court of Arkansas, erred in holding that John H. Criner was estopped to claim the one-half royalty interest conveyed by the Ritchies to V. S. Parham when the uncontradicted testimony shows that John H. Criner did not know that a transaction concerning the interest was pending, between V. S. Parham and J. C. Ritchie.

7. The Ouachita County, Arkansas, Chancery Court, Second Division, and the Supreme Court of Arkansas, erred in holding that Mary E. Criner was estopped when the uncontradicted evidence shows that she had nothing to do with the transactions and knew nothing about them until after the completion thereof.

8. The Ouachita County, Arkansas, Chancery Court, Second Division, and the Supreme Court of Arkansas, erred in holding that John H. Criner and Mary E. Criner were estopped, when the uncontradicted evidence shows that neither of them did any act, or was guilty of any conduct, that would constitute an estoppel against them in favor of respondents herein.

9. The Ouachita County, Arkansas, Chancery Court, Second Division, and the Supreme Court of Arkansas erred in

holding that respondents were innocent purchasers for value and without notice, when the uncontradicted testimony shows that respondents were placed upon notice that John H. Criner claimed the land, and that it was his homestead.

## V

## ARGUMENT

### Summary of Argument

POINT A—RESPONDENTS WERE NOT INNOCENT PURCHASERS FOR VALUE AND WITHOUT NOTICE BECAUSE OF THE EXECUTION OF THE DISCLAIMER OF TITLE BY JOHN H. CRINER IN 1938, AS THE UNCONTRADICTED EVIDENCE SHOWS THEY DID NOT RELY UPON IT.

POINT B—THE FAILURE OF THE COURTS BELOW TO GRANT RELIEF TO MARY E. CRINER, UNDER THE DOWER STATUTES OF THE STATE OF ARKANSAS, DEPRIVES HER OF THE RIGHTS GUARANTEED TO HER BY THE 14TH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

POINT C—THE SUBJECTING OF THE HOMESTEAD OF JOHN H. CRINER AND MARY E. CRINER TO THE DECREE AND JUDGMENT OF THE COURTS BELOW DENY PETITIONERS THE DUE PROCESS OF LAW AND EQUAL RIGHTS GUARANTEED TO THEM BY THE 14TH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

POINT D—THERE IS NO EVIDENCE IN THE RECORD TO SUBSTANTIATE THE ELEMENTS OF ESTOPPEL AGAINST JOHN H. CRINER, OR MARY E. CRINER, AND THE JUDGMENTS AND DECREES OF THE COURTS BELOW ARE, THEREFORE, ARBITRARY AND CAPRICIOUS, AND DEPRIVE PETITIONERS, AND EACH OF THEM, OF THEIR PROPERTY, WITHOUT DUE PROCESS OF LAW AS GUARANTEED TO THEM, AND EACH OF THEM, BY THE 14TH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

POINT E—THE ADJUDICATION OF ESTOPPEL BY A STATE COURT UPON CONFLICTING EVIDENCE IS FINAL; BUT A JUDGMENT OF ESTOPPEL UNSUPPORTED BY ANY SUBSTANTIAL EVIDENCE IS ARBITRARY AND CAPRICIOUS.

POINT F—RESPONDENTS COULD NOT REASONABLY ANTICIPATE THE ACTION OF THE STATE COURTS IN DENYING TO THEM THE RIGHTS HEREIN SET UP, OR THE COURT'S ACTION IN HOLDING THEM ESTOPPED, WITHOUT SUBSTANTIAL EVIDENCE UPON WHICH TO BASE THE JUDGMENTS.

## Point A

### The Disclaimer

John H. Criner executed a disclaimer of interest in 240 acres of land in Ouachita County, Arkansas, in which was included the land in controversy herein (R. 156). The disclaimer was dated March 18, 1938, was acknowledged before a notary public, but never placed of record.

The circumstance under which V. S. Parham acquired knowledge of the disclaimer is detailed by Thomas Gaughan, the attorney for J. C. Ritchie, et al., in the transaction (R. 141). The purpose of the disclaimer was to perfect the title to an oil and gas lease that had been executed and delivered to an oil company (R. 142). The witness, Thomas Gaughan, told V. S. Parham that he had taken a disclaimer from an old negro man, John Criner, and who, he understood, was a tenant of the Ritchies (R. 142).

It is thus seen that the respondents, V. S. Parham, et al., were strangers to the transaction in which the disclaimer was executed by John H. Criner.

It is petitioners' contention that respondents did not rely upon the disclaimer, and this is shown conclusively by the testimony of respondent, V. S. Parham (R. 128). The testimony of V. S. Parham shows that he went upon the property and made a personal investigation, and thereafter paid for the interest (R. 129). V. S. Parham reveals in his testimony on cross-examination (R. 133-4), that he went to the home of John H. Criner in the afternoon and had a talk with Criner, discussing the execution of a disclaimer or a quitclaim deed. The old negro man was not willing to sign anything at that time, and respondent returned to Criner's home early the next morning. Upon the occasion of Parham's last visit and talk with Criner, there was a positive refusal by Criner to sign either a disclaimer or a quitclaim deed.

Whatever may have been the effect of the disclaimer, executed by John H. Criner in 1938, the uncontradicted testimony of the respondent, V. S. Parham, is that no reliance whatever was placed upon the disclaimer. On the contrary, the uncontradicted testimony of the witness shows that he, having taken the cue from Thomas Gaughan, the attorney, set about to obtain his own protection by meeting a requirement that the attorney had made, when examining the title about eight years previous. John H. Criner, in his testimony (R. 52), detailed the reason for, and the circumstances under which, the disclaimer of title was executed. That, however, is not material to the questions before this Court.

The bare assertions that he relied upon the disclaimer is not substantial evidence that he did so, when the uncontradicted facts, as revealed by him, show that he did not. The uncontradicted testimony of V. S. Parham is that he made two attempts to procure a disclaimer of title or quitclaim deed from John H. Criner and failed upon both attempts. The only conclusion a reasonable mind can draw, in view of the uncontradicted testimony, is that Parham did not rely upon the disclaimer executed by John H. Criner in 1938, until after Criner had refused to execute another at Parham's request.

The disclaimer did not divest John H. Criner of his title, and could only be used as an estoppel. Its effect as an estoppel was completely nullified when V. S. Parham obtained information directly from John H. Criner that Criner would not execute another. Likewise, when V. S. Parham obtained information directly from John H. Criner, that Criner would not execute a disclaimer of title, or a quitclaim deed, Parham was placed upon notice of whatever claim or right that Criner might have to the land. It then devolved upon V. S. Parham, under the well established rules of law, which, as a part of due process, petitioners are

entitled to have applied, to find out from John H. Criner what claim, if any, Criner had in the land. V. S. Parham was then subjected to whatever rights or title John H. Criner had to the land.

POINT B

**The Dower Statutes of Arkansas**

The Statutes of the State of Arkansas, the pertinent provisions of which are set forth in full in the appendix II (a) of this brief, protects the one-third interest for life, of Mary E. Criner, in the land. Mary E. Criner was legally married to John H. Criner (R. 59), and under the Dower Statutes of Arkansas, is entitled to the benefits thereof. The decision of the Supreme Court of Arkansas in this case, which is set forth in full in Appendix II, (b), completely ignores the rights of Mary E. Criner, under the aforesaid statutes.

This Court in the case of *Iowa-Des Moines National Bank* v. *Bennett,* 284 U. S. 239, 76 L. Ed. 265, held:

> "Although the prohibition of the 14th Amendment has reference exclusively to action by the State as distinguished from action by private individuals, the rights thereby protected may be invaded by the acts of a state officer under color of state authority, even though he not only exceeds his authority, *but also disregards special commands of the State Law.*"

The above holding of this Court is supported by a line of decisions such as *Neal* v. *Delaware,* 103 U. S. 370, 26 L. ed. 567; *Home Telep. & Teleg. Co.* v. *Los Angeles,* 227 U. S. 278, 57 L. Ed. 510.

That the State Judiciary is also subject to the Constitutional provisions of the 14th Amendment, is clearly shown by the decision of this Court in the case of *Brinkerhoff-Farris Trust and Savings Co.* v. *Walter O. Hill, Treasurer,* 281 U. S. 673, 74 L. Ed. 1107.

Therefore, under the decisions above mentioned, the Judiciary of the State of Arkansas, may not ignore the commands of the State Statutes of Arkansas, and deprive petitioner, Mary E. Criner, of her rights under the Statutes of the State of Arkansas. The judgment of the Ouachita County, Arkansas, Chancery Court, Second Division, and the decision of the Supreme Court of Arkansas, contains nothing that will protect Mary E. Criner's rights under the dower statutes. Clearly, she is entitled, if the Statutes mean anything, to protection. Those Statutes are now the law which govern the rights of every wife of a resident, or owner of land in the State of Arkansas. Unless this Court will act to enforce such rights, the law in this respect, as it applies to the situation of Mary E. Criner, will not be applied. Respondents respectfully submit that this may not be done in keeping with the 14th Amendment to the Constitution of the United States.

POINT C

**The Homestead Right**

Ordinarily this Court, of course, does not undertake to enforce the rights of citizens of the several States as provided in the Constitution of the States. However, the question in the present case is the complete failure of the State Judiciary to apply the provision of Article IX, Section 3 of the Constitution of the State of Arkansas. That provision of the Constitution of Arkansas simply provides that the homestead of any resident of the State of Arkansas shall not be subject to the decree of any Court, with certain well-defined exceptions. The full text of the homestead provisions, available to John H. Criner and Mary E. Criner, are set forth in Appendix II (c), of this brief.

The above provision of the Constitution of Arkansas has been before the Supreme Court of Arkansas some fifty or

sixty times since the period of its enactment. In all of the cases, in which such Constitutional provisions have been applied, there has never been an invasion by the Courts, of the homestead, until this case. There are two cases, which will be presently discussed, that approach nearer to an invasion of the homestead right, than any other cases.

In the case of *Tipton, Administrator, ex parte,* 123 Ark. 391, the Supreme Court of Arkansas held:

> "Under the Constitution, the land itself, which constitutes a homestead, and not the mere right of occupancy, is exempted from levy and sale."

In the decision the Supreme Court of Arkansas said:

> "It is a cardinal rule of construction that different sections of the Constitution bearing on the same subject should be read in the light of each other. When this is done, it is manifest that the framers of the Constitution meant that it is the land itself which constitutes the homestead and not the mere right of occupancy that is exempt from levy and sale. * * *"

Therefore, the royalty and mineral interest was, according to the holding of the Supreme Court of Arkansas, a part of the homestead of John H. Criner. John H. Criner, the record abundantly shows, without any attempt of contradiction, had, more than one-half century ago, impressed the sixty acres of land with all of the characteristics of a homestead. The mineral and royalty interest, conveyed to V. S. Parham, by J. C. Ritchie, et al., was as much a part of Criner's homestead, as the land upon which he had lived for more than fifty years.

The Supreme Court of Arkansas held in the case of *Scoggin* v. *Hudgins,* 78 Ark. 531, that a Court of Equity may declare that a claim of creditors is a lien on the homestead of a deceased debtor in the hands of his widow and heirs, but that it shall not be sold until the homestead expires. The same court also held in the case of *Taylor* v. *Greene,* 186

Ark. 817, that the vested interest of an heir, inherited from her father, is subject to attachment, though the interest is subject to her mother's homestead. In the case of *Taylor* v. *Greene, supra,* the Supreme Court of Arkansas said:

> "In the instant case the widow occupying the attached property is a party, but she became a party upon her own intervention. No relief was prayed against her, and her homestead right is not questioned, and no judgment against her daughter will divest this right. * * *."

The above two cases are the nearest approaches to an invasion of the homestead right that the Supreme Court of Arkansas has ever made. In those cases, however, it was specifically provided that the homestead, so long as it existed, would be respected. Such is not the case here. With all due respect to the Courts of Arkansas, they have ignored the Constitutional provisions above mentioned, and have invaded the homestead, and have subjected it to the decree of the courts.

The invasion, if such were the common practice, would not be the concern of this Court; however, when petitioners' homestead is subjected to the decree of the courts, when no other homestead has been so treated, is not in keeping with the due process of law and equal rights provisions of the 14th Amendment to the Constitution of the United States.

It is respectfully submitted that petitioners, as a part of due process of law and equal rights, are entitled to claim the benefits of the Constitution of the State of Arkansas, as those benefits have been applied heretofore by the courts of Arkansas.

### Point D

### The Judgment of Estoppel and That Respondents Are Innocent Purchasers Is Capricious and Arbitrary

A consideration of this point involves a consideration of the testimony of V. S. Parham, Smead Stewart and Thomas

Gaughan, together with the disclaimer, discussed in Point A, and weighing that testimony upon the scales of equitable estoppel (App. I).

In view of the discussion of the disclaimer under Point A, and the fact that V. S. Parham did not pay out any money, as shown by his own testimony, until several days after he had received notice that John H. Criner would not sign a disclaimer of title or a quitclaim deed, little need be said on innocent purchasers.

In *Pomeroy* on *Equity Jurisprudence,* 4th Ed. Vol. 2, Sec. 805, Mr. Pomeroy lays down six principles upon which there may be an estoppel affecting the legal title to land. Those six principles are as follows:

> "1. There must be conduct—acts, language, or silence—amounting to a representation or a concealment of material facts.
>
> "2. These facts must be known to the party estopped at the time of his said conduct, or at least the circumstances must be such that knowledge of them is necessarily imputed to him.
>
> "3. The truth concerning these facts must be unknown to the other party claiming the benefit of the estoppel, at the time when such conduct was done, and at the time when it was acted upon by him.
>
> "4. The conduct must be done with the intention, or at least with the expectation, that it will be acted upon by the other party, or under such circumstances that it is both natural and probable that it will be so acted upon. • • •
>
> "5. The conduct must be relied upon by the other party, and, thus relying, he must be led to act upon it.
>
> "6. He must in fact act upon it in such a manner as to change his position for the worse." • • •

Weighing the testimony of the three witnesses by the scales of the first principle laid down by Mr. Pomeroy, we find that there was no act, conduct, language or silence by John H. Criner or Mary E. Criner amounting to a representation or a concealment of material facts. V. S. Parham testified himself that John H. Criner was not advised of Parham's purpose.

There is a complete absence of any meeting of the requirements laid down by Mr. Pomeroy under the 4th principle, when all the testimony most favorable to V. S. Parham is weighed by that principle.

How it could be said that John H. Criner expected V. S. Parham to act upon what Criner had said and done, when by Parham's own testimony, it is shown that Criner did not know Parham's purpose, is not understood by petitioners. How it could be said that Criner was grossly negligent, and therefore misled Parham, in view of the fact that Criner did not know Parham's purpose, is not understandable.

Under the 5th principle laid down by Mr. Pomeroy, Parham must have relied upon the conduct, act, language or silence of John H. Criner. How can it be said that John H. Criner did anything that would justify V. S. Parham acting upon it, when the very last information that Criner gave Parham was that Criner would not execute a disclaimer of title or a quitclaim deed to the land.

The testimony of V. S. Parham himself, and that of Smead Stewart, his witness, is clear that they made the two visits to Criner's home about the 6th and 7th of September, 1945 (R. 140). The testimony of Parham is also clear that the draft in payment of the royalty, was dated September 11th, 1945 (R. 128). Therefore, it is obvious, under the testimony most favorable to Parham that Parham paid for the royalty some four or five days after John H. Criner

had told Parham in person that Criner would not sign a disclaimer of title or a quitclaim deed.

Therefore, the only conclusions that any reasonable mind could draw from what had transpired, considering Parham's own testimony, and that of his witnesses, were, that if Parham completed the transaction with the Ritchies, Criner would likely, and could be expected to assert whatever right or title he had in the land.

The Supreme Court of Arkansas found that V. S. Parham directed the bank to pay the draft before John H. Criner refused to execute the disclaimer of title or a quitclaim deed. With all due respect to that Court, there is no evidence in the record to that effect.

The record is completely devoid of any act, conduct, language or silence upon the part of Mary E. Criner that would estop.

In the case of *Postal Teleg.-Cable Co.* v. *City of New Port, Kentucky*, 247 U. S. 464, 62 L. Ed. 1215, 38 Sup. Ct. 566, this Court held:

> "It is the duty of the Federal Supreme Court to review and correct the error of a state court in resting its decision denying asserted Federal rights upon a basis of fact which has no support in the record."

The above holding is supported by the following decisions of this Court:

*Southern P. Co.* v. *Schuyler*, 227 U. S. 601, 611, 57 L. Ed. 662, 669, 43 L. R. A. (N. S.) 901, 33 Sup. Ct. Rep. 277; *North Carolina R. Co.* v. *Zachary*, 232 U. S. 248, 259, 58 L. Ed. 591, 595, 34 Sup. Ct. Rep. 305, Ann. Cas. 1914C, 159, 9 N. C. C. A. 109; *Carlson* v. *Washington*, 234 U. S. 103, 106, 58 L. Ed. 1237, 1238, 34 Sup. Ct. Rep. 717; *Norfolk & W. R. Co.* v. *West Virginia*, 236 U. S. 605, 610, 59 L. Ed. 745, 748, P. U. R. 1915C, 293, 35 Sup. Ct. Rep. 437; *Interstate Amusement Co.* v. *Albert*, 239 U. S. 560, 567, 60 L. Ed. 439, 443, 36 Sup. Ct. Rep. 168.

It is respectfully submitted that unless this Court finds, after considering the evidence most favorable to respondents, that the tests laid down by Mr. Pomeroy are met, this Court, under the above quoted authority, must reverse the decisions of the Arkansas Courts.

POINT E

**The Adjudication of Estoppel**

While it is ordinarily true that the adjudication of an estoppel by a State Court upon conflicting evidence is final, as was held by this Court in the case of *Weyerhaueser* v. *Minnesota,* 176 U. S. 550, 44 L. Ed. 583, 20 Sup. Ct. 485, this case presents a different question. The question here is similar to that in the case of *Postal Teleg.-Cable Co.* v. *New Port, supra,* in which this Court said:

> "But the question arises, whether the basis of fact upon which the State Court rested its decision denying the asserted Federal rights has any support in the record; for if not, it's our duty to review and correct the error. * * * Citing Authorities. * * *"

The question then before this Court is whether the judgments of the State Courts are supported by the facts, on the question of innocent purchasers and estoppel, by any substantial evidence in the record. If not, it is the duty of this Court to correct the error.

POINT F

**When the Federal Questions Were Raised**

Petitioners rely upon the case of *Saunders* v. *Shaw,* 244 U. S. 317, 61 L. ed. 1163, 37 Sup. Ct. 683 in which this Court held:

> "The claim that a suit to enjoin the collection of a drainage tax, in which the trial court had ruled that it

was not open to plaintiff to show that his land was not benefited by the drainage improvement, was decided against an intervening holder of bonds payable out of such tax without giving him the proper opportunity to present his defence, and hence without the due process of law guaranteed by the U. S. Const. 14th Amend., when the highest state court, upon the ground that plaintiff's land was not and could not be drained under the drainage system, reversed the judgment below, dismissing the suit, and granted an injunction against the assessment, was raised in time to serve as the basis of a writ of error from the Federal Supreme Court, although it was first made in the assignment of errors filed with the chief justice of the state court shortly after that court had refused to consider an application for rehearing, since a party is not bound to contemplate a decision of the case before his evidence is heard, and therefore was not bound to ask a ruling or take other precaution in advance."

Petitioners could not reasonably anticipate the action of the Supreme Court of Arkansas in denying, or failing to apply the principles that are presented to this Court. To do that, they would have necessarily questioned the action of the State court before that court had an opportunity to pass upon the case.

Petitioners presented their Federal claims upon the first and only opportunity to do so, after it was evident that the State Supreme Court had disregarded them.

It is, therefore, respectfully submitted that Petitioners are entitled to be adjudged on the question of when Federal issues were raised, by the authority of *Saunders* v. *Shaw, (supra)*.

## Conclusion

In conclusion, we now call the Court's attention to the fact that John H. and Mary E. Criner are aged Negroes of limited mentality and have been deprived of their property

without due process of law as guaranteed by the 14th Amendment to the Constitution of the United States in that they and each of them are held to be estopped from claiming and recovering the one-half royalty interest purchased by V. S. Parham from the Ritchie heirs, the title thereto being divested out of John H. and Mary E. Criner and each of them, by solemn decree of the court, holding them to be estopped from claiming these valuable mineral rights, without any substantial evidence of actions or conduct on their part or on the part of either, sufficient to constitute an estoppel.

The courts of Arkansas have inadvertently overlooked the fact that this is a case between private parties and should not be arbitrarily and capriciously decided in violation of settled principles of law and contrary to the undisputed evidence, even though the trial court and the Arkansas Supreme Court so deciding, had jurisdiction of the cause. What both the trial court and the Arkansas Supreme Court did in overlooking the undisputable facts is in violation of the 14th Amendment to the Constitution of the United States, and Petitioners urge this Honorable Court, under the authority of *Johnson* v. *Risk,* 34 L. Ed. 683, to carefully consider the failure of the Arkansas Supreme Court to express an opinion on rehearing as to the issue raised in the petition for rehearing. If that court found an independent ground, which was a good and valid one, sufficient within itself to sustain the judgment, it did not state that ground. In fact, it stated, no ground for refusing to rehear. Under that situation, this Honorable Court will take jurisdiction of the case and ascertain for itself whether the rights of Petitioners were ignored and whether the action of the highest court in the State of Arkansas constitutes a denial of Federal rights to these Petitioners, based upon a factual situation not supported by the record.

The judgment of the Ouachita County, Arkansas Chan-

cery Court, Second Division, and the decision of the Arkansas Supreme Court, apparently require of John H. Criner, a Negro, a higher standard of conduct and care in his business affairs, than is required of an ordinary person, and lowers the standard required of V. S. Parham, a White man. This, we submit, is discriminating against John H. Criner in favor of V. S. Parham, when, if any discrimination is to be shown, it should be in favor of John H. Criner, a Negro of limited education, of the humble type, and desirous of getting along with the white folk and of being agreeable where white folk are concerned. Whereas, V. S. Parham, is an educated white man with many years' experience in gas and oil trading.

By the Grace of God, John H. Criner was in possession of one of the richest tracts of land, from a mineral value standpoint, lying within the State of Arkansas. He became the target of the money-grabbing, and heartless oil traders of the day.

So far as Mary E. Criner is concerned, any decision or judgment holding her estopped, and holding V. S. Parham an innocent purchaser for value without notice, is entirely without support by evidence of any nature and is contrary to the due process of law guaranteed by the 14th Amendment to the U. S. Constitution.

Additional evidence brought into the record of the Arkansas Supreme Court, under Rule 24 of that court, was the five Royalty Deeds—one from J. C. Ritchie, et al. to V. S. Parham, and four deeds from V. S. Parham et ux. to the other Respondents herein. All these deeds were warranty deeds, executed, signed, acknowledged, delivered, and filed for record on September 6, 1945, at 4:50 P. M. The effect of these deeds establish the fact that Parham bought and paid for his royalty interest before he made any inquiry of Criner and before he interviewed Criner, concerning title to the land. Thus, we see that if Parham bought and paid for

his mineral interest before he interviewed Criner, the occupant of the land, he was not and could not have been an innocent purchaser. The Arkansas Supreme Court did not venture an opinion on this documentary evidence, which completely impeaches V. S. Parham's testimony. Had these five deeds been before the Chancellor, instead of a general stipulation as to the deeds, the results in the trial court would undoubtedly have been different.

The trial court erred in holding that Criner's negligence in executing the disclaimer in 1938, estopped him from asserting any claim to the royalty interest purchased by V. S. Parham, et al. The holding of the trial court that John H. Criner was the owner of the 60 acres of land was sustained by the Arkansas Supreme Court in its decision. However, Petitioners submit that both courts were in error in holding that John H. and Mary E. Criner could be deprived of one-half the royalty under these lands, by an estoppel which could operate *only* as against John H. Criner, if against either of them. This being a part of the homestead, V. S. Parham et al. could not acquire title thereto except by deed from John H. Criner and Mary E. Criner, his wife, executed in accordance with the statutes of the State of Arkansas. If Respondents insist, as they have heretofore, that John H. Criner was negligent and that his negligence operated as an estoppel against both Criner and his wife, then Petitioners' answer to that is that such alleged negligence was not the Proximate Cause of the injury complained of by Respondents. That theory was ably presented by one of our co-counsel, to the Arkansas Supreme Court, which was supported by the case of *Blue Grass Taxi Garage Co., Inc.* v. *Shepherd,* 200 S. W. (2d) 936, which cites with approval the *People's Trust Co.* v. *Smith,* 215 N. Y. 488, 109 N. E. 561, a very able opinion rendered by the late Associate Justice Cardozo, a long-time member of our U. S. Supreme Court.

It is, therefore, submitted that this case is one calling for the exercise by this Court of its supervisory power, in order that the decree of the Ouachita County, Arkansas Chancery Court, Second Division, and the decision of the Arkansas Supreme Court, may be corrected, and that to such end a Writ of Certiorari should be granted and this Court review the decision of the Arkansas Supreme Court, and finally reverse it.

C. M. MARTIN,
*Camden, Arkansas;*
HENRY B. WHITLEY,
*Magnolia, Arkansas;*
J. R. WILSON,
*El Dorado, Arkansas,*
*Counsel for Petitioners,*
By J. R. WILSON,
*Of Counsel.*

## APPENDIX I

(a). The text of the disclaimer (R. 156).

Disclaimer of Interest

Know All Men by These Presents:

I, John Criner, by these presents state that I make no claim to ownership in or title to the following described lands located in Ouachita County, Arkansas, to-wit:

The SW¼ of SW¼, Sec. 19, the NW¼ NW¼, Sec. 30, the W½ of SW¼, Sec. 30, T. 15-S, R. 18-W; the NE¼ of SE¼ and the SW¼ of SE¼, Sec. 25, T. 15-S, R. 19-W, containing 240 acres, more or less.

For many years I have lived on the SW¼ of SW¼ 19-15-18, but I have lived on said land as a tenant of George L. Ritchie and of his heirs. I have never claimed and do not now claim this land adversely against the heirs of said George L. Ritchie.

For years I paid rent to Mr. Ritchie and to George R. Gordon, as Executor of Mr. Ritchie's Estate. For the past few years I have not paid any rent, due to the fact I had money to pay rent with, but I have acknowledged to Mr. Gordon at all times that I was not claiming to own any part of this land.

Witness my hand and seal this 18th day of March, 1938.

(Signed) J. H. CRINER.

STATE OF ARKANSAS,
*County of Ouachita:*

Be it remembered that on this day came before me, the undersigned, a Notary Public in and for Ouachita County, Arkansas, John H. Criner, to me well known as the person signing the foregoing paper and he stated to me that he signed same for the consideration and purposes therein mentioned and set forth.

Witness my hand and seal as such Notary Public on this 18th day of March, 1938.

(Signed) W. M. POINDEXTER,

[NOTARY SEAL.] *N. P.*

My Commission Expires 10-27-1940.

We, W. R. Thrasher and Claud Horne, certify that we saw John Criner execute the foregoing instrument of writing and that we read said paper to him and fully explained its meaning; that is, that he was disclaiming any interest in the above land. He understood what the paper meant and signed same without any coercion or undue influence on the part of anyone.

Witness our hands, this 18th day of March, 1938.

(Signed) C. G. HORNE,
(Signed) W. R. THRASHER.

(b). The testimony of V. S. Parham (R. 128).

Direct examination.

By Mr. Dave McKay:

Q. Where do you live, Mr. Parham?
A. In Magnolia, and have lived there all my life.
Q. How old are you?
A. I am forty-four years old.
Q. What business are you in?
A. The oil business, and have been since 1935.
Q. Are you the same V. S. Parham who purchased and received a deed from the Ritchie heirs for one-half royalty under the Southwest of the Southwest of Section 19, and the Northwest of the Northwest of 30, 15, 18 West, Ouachita County, Arkansas?
A. I am.
Q. State to the Court under what circumstances and how you purchased this royalty interest?
A. In the beginning I went to Ruston to see Mr. Jack Ritchie, as I understood he was attorney in fact for, possibly, all of the heirs. I made that trip on the 3rd day of September, 1945. We didn't finish the deal that day, but he told me he would be in Camden the next day, and for me to call him on the phone. I am not sure whether it was the next day or the day after that, but he called me from Mr. Gaughan's office and we completed the deal and a draft was drawn on me on the First National Bank of Magnolia for $4,000.00 for the one-half royalty interest in eighty acres of land.

Q. Did you have an attorney's opinion on that?

A. A verbal opinion of Mr. Thomas Gaughan. He said that he was familiar with the title, that he had previously examined the title for the Tidewater Oil Company, and that the Ritchies had owned that land for fifty years or more. I asked Mr. Ritchie if he had an abstract to the property, and he said he didn't think he had but would look and see. Smead Stewart and I ran the records and found the chain of title was in George L. Ritchie, and there was no deed out of him. Mr. Watts furnished us a ten years tax certificate. Mr. Gaughan furnished us his opinion that he had given the Tidewater Oil Company. It showed there was someone living on it, but that they had a disclaimer from him. He was a tenant living on the land who had previously disclaimed the title to the land.

Q. Relying on that information did you pay for your royalty interest?

A. Yes, after making a personal investigation of the property.

Q. What was your personal investigation?

A. I went on the property, after being directed to the place by Mr. Charlie Wesson, from whom I had had an oil lease the day before. I went to this place, but we were not definitely sure we were on the right land. I drove up to the house where John Criner was living, and he was in a little patch a little distance to the northeast of the house working on a pig pen. I called to him, and he said wait a minute, and I said "Uncle, I am looking for a place out here, who owns this land?" and he said the Ritchie heirs, and I said "The heirs that Mr. Jack Ritchie represents?" and he said he didn't know Jack Ritchie. My map showed two forties of the George L. Ritchie land, and he said those were the two forties and his house was on the North forty acre tract. He said "Up there is the line of Mr. Grayson's land." I asked him his name and he said it was John Criner, and I asked if he lived there and he said Yes, and I asked how long he had lived there and he said forty or fifty years, or more. He said he was seventy-five years old.

Q. Did you ask him if he had executed a disclaimer previously?

A. I couldn't be positive about that.

Q. When was it you were there?

A. It was sometime between September 5, and the 11th, 1945. The reason I know it was between September the 5th and 11th, I had authorized Mr. Gaughan to draw on me, payable to the proper person, for this royalty. After leaving there I went home and instructed the Bank to pay the draft.

Q. Did you rely on the disclaimer and the statement of John Criner in paying for this royalty?

A. Yes, and the records.

Q. Have you since then conveyed a portion of your interest to R. G. Land, T. W. Lee and others?

A. Yes.

Q. And they, together with you, claim the royalty interest?

The Court: How much did you say you paid for that royalty?

The Witness: $4,000.00.

Q. At the time you purchased it that was the top market price for royalty?

A. I think so. I had bought some from Charles and Redis Wesson for $100.00 per acre royalty nearer the well, and I paid $150.00 per acre to Redis Wesson for royalty.

Q. Redis Wesson's land was between the Ritchie land and the well?

A. Yes.

Q. The discovery well in the Wesson field was on the Northwest of the Southwest Northwest, and this well, at the time you purchased the royalty, had cored some oil sand and were probably ready to set casing?

A. Yes.

Cross-examination.

By Mr. Martin:

Q. Does the royalty deed from the Ritchie heirs to you reflect the correct date you purchased the interest?

A. I am not sure whether it was on the 4th or 5th when Jack Ritchie called me on the phone, but I knew I was in

Ruston on the 3rd. When he called me he was in Camden and I was in Magnolia. The instrument was prepared here in Camden. He took it back to Ruston for his wife to sign, and sent it or brought it back here.

Q. The deal was closed over the phone on the date the instrument was executed?

A. I don't know the exact date, but in a day or two after that.

Q. At the time you closed the deal did you instruct Mr. Gaughan to prepare deed and draw on you?

A. Yes.

Q. Do you know what the date of your royalty deed is?

A. I believe it is September 6th.

Q. Then was the deal closed on that date, or was it closed on a date previous, and then Mr. Gaughan drew a draft on you later?

A. Yes. I think you have the draft there if you want to examine the date.

Mr. McKay: Mr. Parham, here is your royalty deed, what is the date?

Witness: It is dated September 6th, 1945, and the draft is dated September 11th, 1945.

Q. You stated you instructed Mr. Gaughan to prepare the deed and draw a draft on you?

A. Yes.

Q. Mr. Gaughan was well acquainted with your financial standing and accepted your draft?

A. Yes.

Q. And you say the deal was closed and you told Mr. Gaughan to draw a draft on you for the money, and he drew on you several days later?

A. I wouldn't consider the deal closed until it was paid for, it was in process of being made, but it wasn't closed until it was paid for.

Q. What date was it accepted?

A. September 6th, in Ruston, Louisiana.

Q. That is the date you and your wife signed?

A. Me and my wife signed?

Q. I mean the date the Grantor and his wife signed.

A. I would think so. I wasn't there.

Q. Do you remember whether it was cold or hot weather when you went to John Criner's house and asked him what interest he had in the land?

A. I know it wasn't cold. It was possibly cool.

Q. Wasn't the first well drilling on the land when you went there; the first well drilled on the Southwest, Southwest, the discovery well?

A. The first well was drilled on Mr. Wesson's place.

Q. I mean the well on the John Criner place?

A. No, that was completed a month afterwards.

Q. The well on the John Criner place?

A. No, that was completed a month or so before.

Q. When you went didn't you drive within six feet of John Criner's front door?

A. No.

Q. You had to drive in the gate?

A. No.

Q. Don't you recall there is a sign at the gate saying "Posted"?

A. No, there wasn't any sign.

Q. Have you been there since?

A. No.

Q. Was that the only time you have talked to John? That you talked to John and his wife about the title to this land?

A. Yes.

Q. Did you accept the opinion of your attorney and not what John Criner told you about the land?

A. I accepted the record title and the statement of Mr. Gaughan.

Q. Didn't you accept the record title first and didn't make any inquiry to see who the tenant was until the well was started on John Criner's place?

A. No, I made the investigation between when I started negotiations to purchase the land and the time I paid for it.

Q. And you say that John told you he didn't own the land?

A. I asked him what land it was and he said it was the Ritchie heirs'.

Q. Did you ask him about his title?

A. No, I didn't know he had any.

Q. You never recognized he had a title?

A. No.

Q. Did you offer him any sums of money?

A. I can't answer that yes or no, but I think I can explain the deed..

Q. For what purpose did you go there, wasn't it to check the title and see what interest John claimed?

A. Yes.

Q. That was the purpose of going to his home?

A. My purpose was, as I always do, investigate in some manner the condition of the land, etc.

Q. You bought that piece of royalty without seeing the land?

A. I had agreed to buy it before I saw it.

Q. You were willing to rest on the Record Title and your Attorney's opinion of it?

A. Yes.

Q. And you did do that?

A. Yes.

Q. Do you recall the date you were there, about what time of day was it?

A. It was in the afternoon somewhere between three and four o'clock.

Q. Wasn't eight or nine in the morning?

A. No.

Q. And didn't you go back there the next day in the morning?

A. No. I went there in the afternoon.

Q. Didn't you go back the second day?

A. Yes.

Q. For what purpose?

A. I will have to go back and answer that other question.

Q. Can't you say why you went back on the second day?

A. Yes, but you have asked me a question that I can't answer yes or no.

Q. You can't explain that?

A. I told him it was the custom where people were living on other people's land to get a disclaimer from them, but since he talked the way he did I didn't think it necessary, but I would like to have it for my files. He asked if I knew Mr. Gordon, and I said I didn't, and he said he was a fine

man, but that these young folks didn't know him and he didn't want any trouble for they might make him move, and he said he was too old to be moving around, and I asked him if he was assured he wouldn't have to move off, and he said Mr. Gordon had told him he could stay there as long as he wanted to, and he said "Are you assuring me I can stay on here if I sign?" I said I couldn't assure him, but that would ask Mr. Jack Ritchie, that he seemed to be a good fellow, and he said when I would call him and I told him tonight, and he said "Would that be anything to you?" and I said "You are an old man" and I pulled out $50.00, in bills out of my billfolder, and he said "You are talking now!" and he said, "If you will let me live on the land, and you give me this I will sign it." I called Jack Ritchie and told him that the man was old who was living on the place, and it was apparent that Mr. Gordon had thought well of him and had told him that he and his wife could live on the land as long as they wanted to, and Mr. Ritchie said that it would be all right, and I said I would like a disclaimer and he said he wasn't going to pay them anything to sign it, and I said I wanted a disclaimer prepared for their signatures. If you will assure them that they can live there, and he said all right. We went there about eight o'clock the next morning, and John was out in the yard and dressed up with his tie on and was apparently going somewhere. The afternoon before that if I could fix the instrument that would give him the assurance that he would not be moved about in his old age, I think he said his wife wasn't there, I think he said she was at some association and would be in on the bus in the morning, and I said I had no authority then, but when I got there the next morning he said his boy had been there from Camden, and that he had talked it over with the boy and his wife and they didn't want to do anything about it. He had said they would sign. I told him that I had it all fixed up, and that Mr. Ritchie had agreed to his wishes, but he wouldn't sign. That is all I did about it.

Q. When you were there the first day did you have a quitclaim deed?

A. No.

Q. When you went the second day did you have a quitclaim deed with you?

A. Yes.

Q. Who prepared that deed?

A. I did.

Q. You still have the deed?

A. No.

Q. You prepared it yourself?

A. Yes.

Q. Did you make a reservation in the deed that John could live there for the rest of his life?

A. I did.

Q. Was the deed prepared for the heirs of George L. Ritchie? Who was the grantor in the deed you carried there?

A. The heirs of George L. Ritchie.

Q. Did you show it to John?

A. Yes.

Q. Wasn't the time you were there between eight and nine o'clock in the morning?

A. No.

Q. And didn't you park your car six or eight feet from the front door?

A. No.

Q. And didn't the man with you sit in the car and you talk for a few minutes, and then didn't you and John sit on a bench that was leaning against the front porch, and wasn't Mary Criner and their son standing on the front porch?

A. No.

Q. And didn't you address some of your remarks to Mary?

A. No.

Q. Didn't you state to them that you owned a half mineral royalty?

A. No.

Q. And I want to ask you if when you and John were sitting on the bench that was leaning against the porch sitting on the front porch?

A. No.

Q. And didn't you address some of your remarks to Mary?

A. No.

Q. Didn't you state that you owned a one-half royalty, or one-half of the rights under that piece of land, and that you heard they were making some instrument or deed, and that you wanted your mineral rights ratified, and requested them to sign a deed?

A. No.

Q. Didn't you tell them at that time that you would pay them $50.00 if they would sign?

A. No.

Q. And didn't John tell you that he had rather take nothing than $50.00?

A. No.

Q. And didn't you tell him that he had no title, and you named some man, Sid Collier, and would give you the title if he didn't sign the deed?

A. No.

Q. Did you tell John and his wife, at that time, that he didn't have any title and that he had better take the $50.00, as that was all he would ever get out of it?

A. No. I have never spoken to his wife.

Q. Did you ask him whether he was renting from the Ritchies or Mr. Gordon?

A. No. He told me on my arrival that he was renting from the Ritchie heirs, so I had no occasion to ask if he were renting.

Q. If he told you it belonged to the Ritchie heirs why did he refuse to accept the $50.00?

A. I don't know.

Q. Didn't he recognize his rights in the land, and he knew oil was coming in, and he scorned the idea of accepting anything?

A. No.

Q. Don't you know it was cold that day?

A. I don't know. In all probability I was in my shirt sleeves. I can't say about that.

Q. Were you seeking to have John sign a disclaimer?

A. I talked to him about it.

Q. Did you talk to him about signing a disclaimer when you were there the first day?

A. No.

Q. Have you stated who accompanied you to John Criner's that day?

A. Smead Stewart.

Q. Did he also go with you there on the second day?

A. Yes.

Q. Have you sold a part of the royalty you purchased on this land to R. G. Lawton?

A. Yes.

Q. That is all.

Redirect examination.

By Mr. McKay:

Q. After that conversation you had with John Criner did you go home and instruct the Bank to pay the draft?

A. I did.

Q. If you had found that he was asserting any claim to that land would you have paid the draft?

A. No.

Witness excused.

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The testimony of SMEAD STEWART (R. 140-141).

Direct examination.

By Mr. McKay:

Q. State your name to the Court.

A. Smead Stewart.

Q. Where do you live?

A. I live in Magnolia, Columbia County, Arkansas.

Q. How old are you?

A. I am 31 years old.

Q. What business are you in?

A. The oil business.

Q. How long have you been in the oil business?

A. About 12 years.

Q. Do you know when Mr. Parham purchased a one-half in this land from Mr. Jack Ritchie?

A. I wasn't present when the telephone conversation took place.

Q. Did you go to Ruston, Louisiana, with him?
A. Yes.
Q. Did you come to Camden with him?
A. Yes.
Q. State what you did?
A. I think we went to Ruston on the 3rd of September, 1945, and we talked to Mr. Ritchie about the one-half minerals, that was under the Southwest of the Southwest and the North half of the Northwest Northwest, and he said he would advise Mr. Parham in a few days, and, as I remember, Mr. Parham traded with him over the phone, and we went to Wesson where the discovery well was in Section 24, we went to see what it was and we asked Redis and Charlie Wesson where the Criner place was and they directed us and we drove over there. That was about the 6th or 7th of September. We drove up to the house, off the road, and I presumed it was John Criner's, and he was standing there nailing on a pen, or something, and Mr. Parham and I walked out to where he was. As well as I remember Mr. Parham asked him what land that was, we didn't know exactly it was, and John said it was the Ritchie heirs', and Mr. Parham said "What land is that over there?" and he said that was Mr. Grayson's land, and then he pointed to what he said was Mr. Wessor's land, and Mr. Parham had a map, and he asked "Is this forty acres here the Ritchie heirs'?" and John said yes, and Mr. Parham asked who lived there and John said he did. He said his name was John Criner, and Mr. Parham asked him about a disclaimer, and asked how long he had lived there, and he asked if he would be willing to sign a disclaimer, that that was the custom when people were living on land of other people, and he said he couldn't sign then, that his wife wasn't there. I remember in the conversation he said Mr. Gordon had had charge of the Ritchie Estate for a long time, and that he got along with him fine, but he didn't know about the younger ones, that he was afraid to sign papers because it might get him in trouble, and he said he didn't want to do anything that would cause trouble for him and the Ritchie heirs, and Mr. Parham asked if he would or could get an agreement from the Ritchie heirs that he could live on the place all his life if he would sign, and he said he would.

Q. Did you go back the next morning?

A. Yes, and when we got there John was all dressed up, and he said that one of his boys had been there the night before, and that his boy and his wife didn't want him to sign anything, and he said he had better not do it.

No cross-examination.

Witness excused.

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The testimony of THOMAS GAUGHAN (R. 141-144).

Direct examination.

By Mr. McKay:

Q. Your name is Thomas Gaughan?

A. Yes.

Q. What is your profession?

A. I am practicing law in Camden, Arkansas, and have been since 1934.

Q. Do you know Mr. V. S. Parham?

A. Yes.

Q. I will ask you whether in September, 1945, you closed a deal for him with the Ritchie heirs for some royalty under the land in this lawsuit?

A. Yes, I did.

Q. State the circumstance.

A. Mr. Parham came to my office and told me that he had been to Ruston to see Jack Ritchie and was trying to make a deal with him, and a few days later Jack came in my office and explained what it was. It was for a one-half mineral participating royalty under the Southwest of the Southwest and the North half of Northwest, for $100.00 per acre, $4000.00. Mr. Parham asked me about the title, and I told him that I had examined the title for the Seaboard Oil Company, and at that time I had approved the title in the Ritchie Estate, and that I had taken a disclaimer from an old Negro man, John Criner, and I understood he was a tenant of the Ritchies. Mr. Parham told me that if he did make a deal with the Ritchies to draw a draft on him in Magnolia for $4000.00 when I got the deed, and I did.

Q. Had you prepared this disclaimer?

A. I did prepare it.

Q. What was the circumstances of obtaining it?

A. I had examined the title, and whenever I examine a title, especially if it is on oil and gas land, I require an affidavit from someone familiar with the land as to who is in possession of the property, and if it is other than the owner that he is getting the land from, I ask for a disclaimer, and when I got an affidavit about this property it stated that a colored man, John Criner, was living on the land, and I suggested to Mr. Gordon that he get a statement from this Negro as to the facts as to how he was on the land, and Mr. Gordon came up to my office and gave me the facts and I prepared the disclaimer. I put *340* acres in the disclaimer, he thought John was living only on one forty, I told him that wouldn't matter, and I wrote it down just as he gave me the information. It wasn't to get any money on the oil and gas lease, for the oil and gas lease had been paid for two or three months before the disclaimer was obtained. I mean the lease from the Ritchie heirs was obtained December, 1937, and the disclaimer not until 1938, and they were paid at that time.

Q. When did Mr. Gordon give you the information from which you drew the disclaimer, and when he did, did he state anything about the agreement he had made with John Criner?

A. He said John Criner was an old colored man who had lived there for years, and that some years John paid him rent and some years he didn't.

Mr. Martin: We object to that statement.

The Court: Objection sustained.

Cross-examination.

By Mr. J. R. Wilson:

Q. Is that paper in your hand the original of the disclaimer you prepared, which was executed at the time?

A. This is the original disclaimer I prepared for Mr. Gordon to get signed.

Q. That was a disclaimer to complete the title for the Tidewater Oil Company?

A. It was prepared to straighten out Mr. Gordon's title. There was a well going to be drilled down there.

Q. This original disclaimer, what about the abstract?

A. I kept the disclaimer in my office, and then I sent it to the Tidewater Oil Company, and they kept it awhile and then sent it back to me, and I had a photostat made of it, and I think I sent the original to Dave McKay.

Q. When did you get that back in your office; after it had served the purpose of the Tidewater Oil Company?

A. I don't remember. I would say a year or a year and a half.

Q. Was it for record?

A. No.

Q. Why wasn't it recorded?

A. I have always understood that an affidavit, or things like that, wasn't to be recorded.

Q. Are you acquainted with the Disclaimer in 174 Arkansas, Harris vs. Bell, Ouachita County, Arkansas? Did you prepare that instrument?

A. I don't know.

Q. It was about an oil claim in the Smackover field?

A. I didn't start practicing law until 1934.

Q. You have prepared several disclaimers?

A. Yes.

Q. You have a regular form?

A. No, I try to write them according to the facts. I didn't use the regular form, Mr. Gordon gave me the facts.

Q. Why did you put in the acknowledgment "for the consideration and purposes mentioned?"

A. I don't recall why that was in there.

Q. There was in fact no consideration?

A. None that I know of.

Witness excused.

## APPENDIX II

(a) Dower Statutes of Arkansas.

(1) Section 4396 of Pope's Digest of the Laws of Arkansas:

> "A widow shall be endowed of a third part of all the lands whereof her husband was seized of an estate of inheritance at any time during the marriage, unless the same shall have been relinquished in legal form."

* * * * * * *

(2) Section 4413 of Pope's Digest of the Laws of Arkansas:

> "No act, deed or conveyance, executed or performed by the husband without the assent of his wife, evinced by the acknowledgment thereof in the manner required by law, shall pass the estate of a married woman; and no judgment or decree confessed or recovered against him, and no laches, default, covin or crime of the husband shall prejudice the right of his wife to her dower or jointure, or preclude her from the recovery thereof, if otherwise entitled thereto."

* * * * * * *

(b) Opinion of the Supreme Court of Arkansas, Rendered January 26, 1948.

John H. Criner, et al., Appellants,

v.

J. C. Ritchie, et al., Appellees

Appeal from Ouachita County Chancery Court, Second Division.

Griffin Smith, Chief Justice.

This case, like others of like nature coming from areas where unusual developments affect values, presents issues

that have acquired importance because oil and gas have been found.

Fee ownership of approximately sixty acres, and the status of mineral and royalty deeds, are involved.

Prior to 1860 a plantation proprietor named Mack C. Smith owned Reason Criner—a slave set free by the Emancipation Proclamation of January 1, 1863. The slave's son, John H., lived with his father on the Smith lands in 1886. Record ownership of the Southwest quarter of the Southwest quarter of Section nineteen, Township fifteen South, range eighteen west, (Ouachita County) was in George L. Ritchie in 1894 and so continued until the litigation from which this appeal comes, although there were tax forfeitures and redemptions which are in no sense controlling here. Ritchie's muniment of title was a deed from Creel Lumber Company, presumptively a corporation.

John H. Criner and his wife, claiming ownership—as the evidence in the case at bar discloses—cleared and improved the land the father said he owned, but through mistake erected buildings south of the line between sections nineteen and thirty. This encroachment extended 110 yards, and as projected east and west involves approximately ten acres. Title to the south half of the northwest quarter of the northwest quarter of section thirty was asserted by John H. Criner through purchase from Peter Todd (John's brother-in-law) in 1911. This is an irregular tract susceptible of description by metes and bounds only.

In February, 1939, Criner and his wife, Mary, executed an oil and gas lease and a mineral deed to E. E. Scott and H. Andrews. By the terms of these documents only forty acres described as the southwest quarter of the southwest quarter of section nineteen were affected. Consideration was that the grantees should procure a decree quieting title in the grantors, or effectuate the same end by satisfactory means. The deed and lease were subsequently cancelled when it was judicially determined that consideration for their execution had failed. However, they were placed of record within two weeks after execution.

The suit resulting in cancellation, but broader in intended scope, was filed in November, 1945 by J. C. Ritchie for him-

self and as attorney in fact for others. The decree was rendered December 10, 1946.

In September 1945, for himself and others he was authorized to represent, executed a deed conveying half of the mineral royalties pertaining to the southwest quarter of the southwest quarter of section nineteen, and the northwest quarter of the northwest quarter of section thirty. Within this area of eighty acres was all of the land claimed by Criner, either through purchase, adverse possession or otherwise. V. S. Parham, to whom the deed was executed for a consideration of $4,000, claims to have been an innocent purchaser, and the Court so found. Others who joined in the intervention were parties to whom Parham had conveyed certain interests. In finding that Parham and his grantees were protected, the decree vested fee title in Criner, subject to the outstanding rights.

The Ritchie interests have appealed from that part of the decree and from a finding that they refund $3,000 representing the sum received from Parham—this for the benefit of Criner—while Criner has appealed from the holding that the royalty deed is good.

In holding that Criner was entitled to the property, subject to the rights of Parham and his grantees, the Court considered testimony showing that prior to 1894 Reason Criner had "bargained" with Creel Lumber Company for the forty acres in section nineteen. A contract of some kind —the exact nature of which John Criner did not understand —was made between John's father and the Lumber Company, in consequence of which the ex-slave paid $50 in cash or its equivalent and owed $50 on the purchase price of $100. John testified that he agreed to pay this balance because his father was old; and he, (John) having but recently married, desired to utilize the property for home purposes. The Lumber Company is alleged to have executed bond for title.

Because title was in the Lumber Company when Reason Criner made the contract, and because the Lumber Company in November 1894 conveyed the property to George L. Ritchie, John Criner, according to his testimony, "made a deal" with Ritchie to assist in perfecting title. John Criner and his wife each testified that a deed was executed by Ritchie. It was never placed of record, and was lost.

Neither could there be found the bond for title or any record entry relating to it.

By some process presumptively official (Koonce *v.* Woods, 201 S. W. 2d 748; Deniston *v.* Langsford, 202 S. W. 2d 860) the land was assessed in 1894 in the name of Ransom Criner and after having been sold for taxes in 1895 and bought by H. W. Myer, it was redeemed by John H. Criner. There was a penciled notation on the record of certificate of purchase indicating that it had been transferred to George L. Ritchie. Thereafter John H. Criner paid taxes until 1916.

Ritchie died in 1913, leaving an estate inventoried at more than $360,000. March 21, 1913, George R. Gordon was appointed administrator. He at once asserted claim to the so-called Criner land, had it assessed as property of the Ritchie heirs, and began paying taxes. During the greater part of the ensuing period no question appears to have been raised regarding Criner's right to possession, as distinguished from ownership. The Ritchies now, however, contend that Criner was a tenant and paid rent.

J. C. Ritchie, who manages the Ritchie estate, was a resident of Ruston, La., in 1945. On September 3rd V. S. Parham called upon him for the purpose of purchasing royalty interests attaching to the two 40-acre tracts, one in section nineteen and the other in section thirty, as heretofore mentioned. Parham met Thomas Gaughan, an attorney of Camden, and asked his opinion regarding the Ritchie title. Gaughan, it appears, had represented Tide Water and Seaboard Oil Companies regarding an oil and gas lease executed by the Ritchie heirs.

Gaughan informed Parham that when the question of ownership was raised he procured from Criner (then in possession) a disclaimer in affidavit form. In this writing, dated March 18, 1938, Criner affirmed that he was renting the land and claimed no interest other than that of a tenant. Parham and a friend—neither of whom was an attorney—examined Ouachita deed and mortgage records and found the conveyance of 1894 through which George L. Ritchie took from Creel Lumber Company. An abstracter's certificate was procured, showing that the Ritchies had paid taxes for the ten preceding years.

While the negotiations were pending Parham and his associate undertook to make a personal inspection of the land. Parham testified that he was not familiar with the exact location, but entered a tract and made inquiry of an old Negro who identified himself as John L. Criner. He asked who owned the land (subsequently found to be the property in litigation) and was told that it belonged to the Ritchies, but that he (Criner) rented. Parham then endeavored to procure from Criner a disclaimer of title. The Negro first agreed to the proposal, provided Parham could give assurance that he would not be disturbed in possession (as tenant) during the remainder of his life, and that a payment of $50 be made.

In the meantime the Ritchies had drawn a draft on Parham for the amount involved. After considering what Gaughan had told him and what Criner himself had said regarding tenancy, Parham concluded to complete the agreement and directed the bank to pay the draft drawn for the Ritchies by Gaughan. That night Parham called Ritchie by telephone and received assurance that Criner's possession would not be disturbed. The following day when Parham saw Criner, the latter refused to sign either a quitclaim deed or a disclaimer, explaining that his wife and son did not want the documents executed. Smead Stuart, who was with Parham when he talked with Criner, supported Parham's testimony.

We agree with the Chancellor that Criner's conduct in asserting he was merely a tenant mislead Parham, and that without assurances of non-ownership the draft would have been dishonored. Criner's mineral deed and oil and gas lease to Scott and Andrews, although recorded, were not in the line of title from Ritchie to Criner and were not constructive notice of Criner's claim. But even so, Criner at a later period told Parham he was only a tenant.

We are also of opinion there was sufficient evidence to sustain the Chancellor's holding that Criner either believed he held under a deed, and hence thought he was owner, or that relationships originally amicable had grown hostile as to the heirs. At least we are not willing to say the Chancellor erred in concluding that on the issue of a lost deed the evidence was clear and convincing. Oral evidence is in har-

mony with the record fact that for years the property was assessed in Criner's name. There is no showing that the legal status changed when Gordon, who no doubt acted honestly upon prima facie showings made to him, caused tax receipts to be issued to the Ritchie estate.

The Chancellor thought that in addition to the deed, evidence of adverse possession preponderated. Although Criner's testimony in support of the deed goes only to the claim that it conveyed the southwest quarter of the southwest quarter of section nineteen, the undisputed evidence is that he mistakenly assumed that the south line of the forty acres was approximately 110 yards farther south. He took possession of the additional ten acres in good faith, believing it was his; and, acting with the same good faith, he erected buildings. Criner thought the irregular area of about ten acres later bought from Todd was immediately south of the property in section nineteen when in fact the two strips in combination accounted for almost twenty acres in section thirty. The chancellor found that the penciled notation made on the recorded certificate of tax purchase was "obviously" unofficial, that it was made by some third person, and was not intended as evidence of an assignment or transfer to Ritchie.

In explaining why the disclaimer procured by Thomas Gaughan was executed in 1938, Criner testified that Gordon, as administrator, had asked him to sign it so that he (Gordon) could "complete title to an oil and gas lease". This testimony is somewhat corroborated by Richard K. Mason, a Camden Attorney, who said that, seven or eight years before, George Gordon and John Criner came to his office and discussed some land about which there was a dispute. No papers or documents were shown him, and Gordon did most of the talking. Mason's memory was hazy regarding details, but the idea he got was that Criner was to make certain concessions, in return for concessions by Gordon (presumptively acting for the Ritchie estate). The purpose, seemingly, was to permit Gordon ". . . to give a lease, or a mineral deed—whether it was surface or mineral rights I don't remember—and they (were in my office) not more than five or six minutes . . . Something was said about a waiver or disclaimer, (but) I don't remember just

(what) the words were. I believe I said, (addressing Criner), 'All right, John, if you sign that waiver it will put you out of court to any one who sees it'. And I believe I made the statement that Mr. Gordon would take care of him if he said he would." Other facts and circumstances were considered, including payment of government agricultural benefits to Criner for a number of years.

We think that in view of all the testimony the Court did not incorrectly appraise the weight of evidence upon the one hand and its clear, cogent, and convincing nature upon the other; hence the decree is affirmed on appeal and cross appeal.

Mr. Justice McFaddin did not take part in the consideration or determination of this case.

(c)

The Homestead Provisions of the Constitution of Arkansas

* * * * * * *

The homestead of any resident of this State who is married or the head of a family shall not be subject to the lien of any judgment, or decree of any court, or to sale under execution or other process thereon, except such as may be rendered for the purchase of money or for specific liens, laborers' or mechanics' liens for improving the same, or for taxes, or against executors, administrators, guardians, receivers, attorneys for moneys collected by them and other trustees of an express trust for moneys due from them in their fiduciary capacity. (Ark. Const. Art. IX, Sec. 3.)

The homestead outside any city, town or village, owned and occupied as a residence, shall consist of not exceeding one hundred and sixty acres of land, with the improvements thereon, to be selected by the owner, provided the same shall not exceed in value the sum of twenty-five hundred dollars, and in no event shall the homestead be reduced to less than eighty acres, without regard to value. (Ark. Const. Art. IX, Sec. 4.)

(d)

Conveyance of Homestead

Section 7181 of Pope's Digest of the Statutes of Arkansas:

"No conveyance, mortgage or other instrument affecting the homestead of any married man shall be of any validity except for taxes, laborers' and mechanics' liens, and the purchase money, unless his wife joins in the execution of such instrument and acknowledges the same."

(6829)

FILE COPY

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1938

No. 82

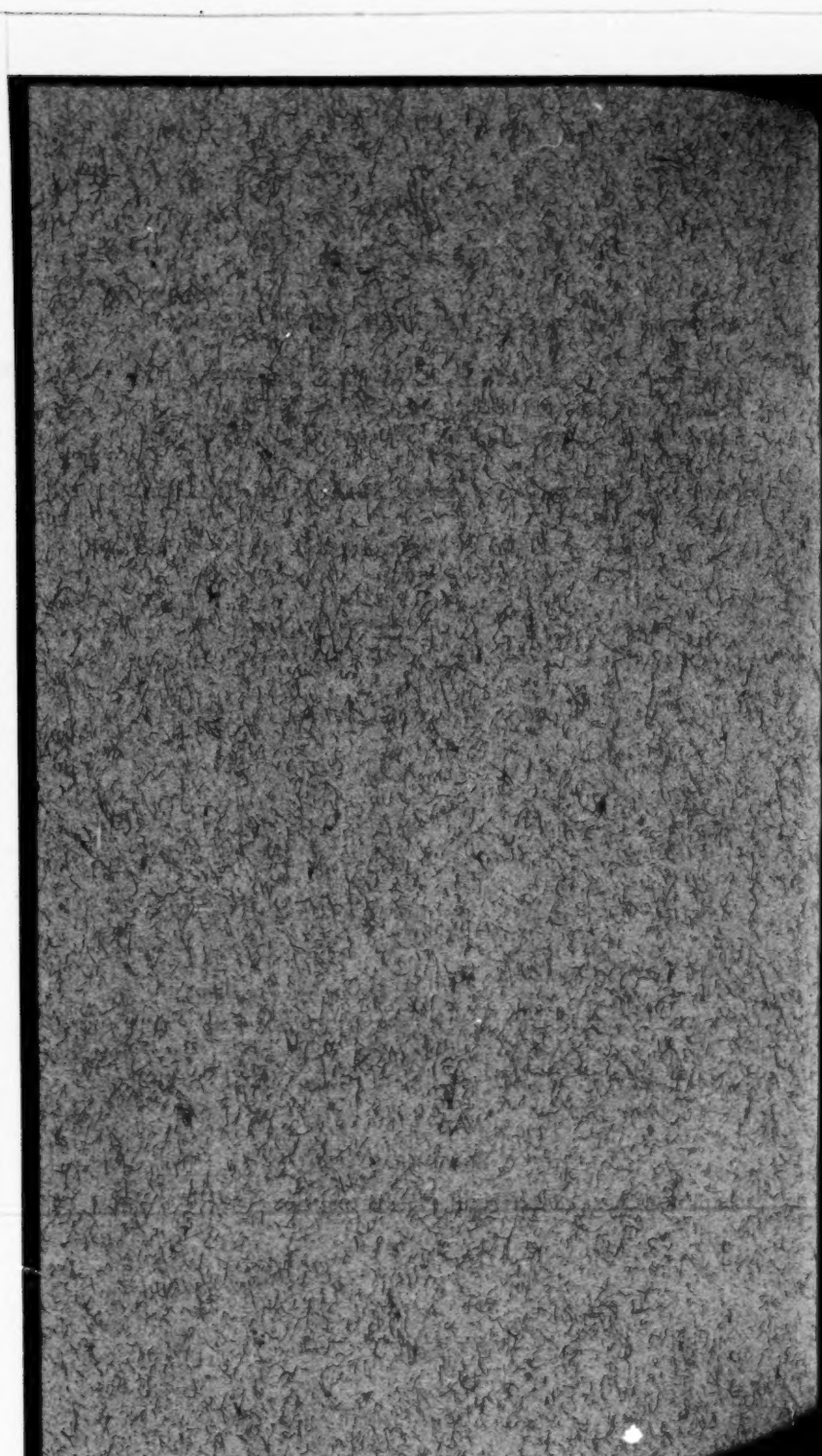
JOHN H. CRINER AND MARY E. CRINER,
*Petitioners,*

vs.

V. S. FARHAM, R. G. LAWTON, T. W. LEE, E. W. BURNETT AND CHRYSTELLE PARTEE,
*Respondents.*

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITIONERS' PETITION FOR WRIT OF CERTIORARI AND TO THEIR BRIEF IN SUPPORT THEREOF

C. W. McKAY,
W. D. McKAY,
E. M. ANDERSON,
*Counsel for Respondents.*



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## Statutes Cited

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*Respondents*

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## BRIEF OF RESPONDENTS IN OPPOSITION TO PETITIONERS' PETITION FOR WRIT OF CERTIORARI AND TO THEIR BRIEF IN SUPPORT THEREOF

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Petitioners herein seek a Writ of Certiorari to the Supreme Court of Arkansas to obtain review of a judgment of that court affirming the decree of the Chancery Court of Ouachita County, Arkansas. Both of said courts held that Petitioners had acquired good title under and by virtue of a lost deed, and the Seven Year Statute of Limitations, to the land in question and one-half of the oil, gas, and other minerals therein and thereunder, and that Respondents, as

innocent purchasers for value, were the owners of one-half of the oil, gas, and other minerals.

Petitioners' petition must be denied because no federal question is presented herein, and even if any federal question is presented, the same was not timely and properly raised in the court below. Before discussing the jurisdiction of this Court, and Petitioners' contentions herein, we will for the sake of clarity make a statement of the facts.

By royalty deed dated September 6, 1945, V. S. Parham, one of the Respondents, purchased from the heirs of George L. Ritchie, Plaintiffs in the lower state court, who were the record owners of the fee, an undivided one-half interest in the oil, gas and minerals under 80 acres of land in Ouachita County, Arkansas, approximately 60 acres of which was involved in this suit.

This litigation commenced on November 6, 1945, when the heirs of George L. Ritchie filed suit against John Criner, Mary E. Criner, his wife, E. E. Scott and H. Andrews, the purpose of which suit was to cancel an oil and gas lease and mineral deed executed by John H. Criner and wife, Mary Criner, on February 1, 1939, unto E. E. Scott and H. Andrews, which instruments were filed for record February 13, 1939, and which covered only the SW¼ of the SW¼ of Section 19, Township 15 South, Range 18 West, Ouachita County, Arkansas. The prayer of the complaint was that said instruments be cancelled and that the title to said forty acres be quieted and confirmed in the plaintiffs as against the defendants. The defendants, John H. Criner and Mary E. Criner, filed an answer on January 17, 1946, an amendment to answer on January 18, 1946, and then finally an amended and substituted answer. In substance, the defendants in the lower state court alleged that in the year 1894, John Criner had acquired a deed executed and delivered to him by George L. Ritchie covering the SW¼ of the SW¼ of Section 19, Township 15 South, Range 18

West, which deed was destroyed by rats without having been recorded. They also alleged that they had been in possession of the sixty acres involved in this suit for approximately fifty years, that the same had been completely under fence and that during the whole of said period they were claiming same as their own.

V. S. Parham and his grantees, R. G. Lawton, T. W. Lee, R. W. Burnett and Chrystelle Partee, filed their intervention on May 15, 1946, in which they adopted the complaint of the plaintiffs and alleged that V. S. Parham purchased an undivided one-half mineral and royalty interest from the plaintiffs in good faith and for value, without notice, either actual or constructive, of any claim or interest therein that John Criner or Mary Criner had.

It might be well to state that the consideration for the execution of the mineral deed and oil and gas lease to Scott and Andrews was their agreement to perfect title to the forty acres in question in John Criner. The consideration failed and the two instruments were cancelled by a Chancery Decree rendered prior to the trial of this case.

In the lower state court, a court of equity, the case was tried, of course, without a jury and the Chancellor found in favor of the defendants, John and Mary Criner, as against the Ritchie heirs, and quieted and confirmed the title of the Criners to the land, together with one-half of the minerals. The Chancellor further held that V. S. Parham was an innocent purchaser for value and quieted and confirmed title in him and his grantees to an undivided one-half mineral interest (R. 150). From the decision of the Chancellor, both the Ritchie heirs, the plaintiffs therein, and the Criners, the defendants therein, appealed to the Supreme Court of Arkansas. Said court in all things affirmed the decision of the lower court (R. 258). Both the Ritchie heirs (R. 263) and the Criners (R. 265) filed petitions for rehearing. It was in this petition for rehearing that Petitioners

for the first time sought to bring up a federal question. The Supreme Court of Arkansas denied both petitions for rehearing (R. 269) and Petitioners herein now seek a Writ of Certiorari.

Around September 3, 1945, V. S. Parham entered into negotiations with Jack Ritchie, one of the heirs of George L. Ritchie, to purchase a one-half royalty interest under the SW¼ of the SW¼ of Section 19, Township 15 South, Range 18 West, and the NW¼ of the NW¼ of Section 30, Township 15 South, Range 18 West, Ouachita County, Arkansas, containing eighty acres, more or less (R. 128). Parham contacted Mr. Thomas Gaughan, an attorney at law at Camden, who informed him that he had examined the title to the land in question in December, 1937, at which time he approved for Tide Water and Seaboard Oil Company the title to an oil and gas lease executed by the heirs of George L. Ritchie. Mr. Gaughan informed Parham that at that time he had procured an affidavit of disclaimer from an old negro man named John Criner, who was in the actual possession of the land (R. 142). In this disclaimer, which was dated March 18, 1938, John Criner stated under oath that he was living on the land involved in this law suit, but that he rented same from the heirs of George L. Ritchie and that he claimed no interest in said land other than as a tenant (R. 156).

V. S. Parham, accompanied by Smead Stuart, neither of whom is a lawyer or an abstracter, then ran the deed records of Ouachita County, Arkansas. They found that there was a deed into George L. Ritchie covering this land executed in 1894, but that there was no deed out of him (R. 129). An abstracter furnished a tax certificate which showed that the Ritchie heirs paid the taxes on this land for the ten preceding years. While the transaction for the royalty was still pending V. S. Parham, accompanied by

Smead Stuart, went out to the land in question. Not being certain of its location, Parham testified that he went upon a tract of land and asked an old negro man who owned the land upon which he was standing. The negro very readily replied that it was the property of the Ritchie heirs (R. 129), and that he rented from them (R. 136). Parham further testified that he showed the negro, who stated that his name was John Criner, a map of that area of Ouachita County, Arkansas, and that through questioning Criner as to the adjoining land owners, he definitely established that the land was that under which he proposed to purchase royalty (R. 129).

Parham further testified he stated to John Criner that he would like to have a disclaimer for his files, that Criner agreed to execute such a document if Parham could assure him he might live there as long as he desired, providing Parham would pay him $50.00; that after this first conversation with Criner, Parham returned to Magnolia and, relying on the opinion of Thomas Gaughan, the record, the affidavit of disclaimer signed by John Criner and the verbal representations of Criner, instructed his bank to pay the draft drawn on him by Thomas Gaughan for the purchase price of the royalty (R. 130). That night Parham called Jack Ritchie by telephone and got Ritchie's assurance that Criner might live on the land as long as Criner desired; but when Parham returned the next day with the desired assurance, Criner refused to sign either a quitclaim deed or a disclaimer, giving as his reason the fact that his wife and his son did not want him to (R. 134). The royalty deed was dated September 6, 1945. Parham testified that he would have refused to pay the draft and would not have purchased the royalty if John Criner had told him that he was asserting any claim to the land (R. 137).

The testimony of Parham was corroborated by Smead

Stuart, who, from the record, appears to be a disinterested witness (R. 140-141).

The testimony of John Criner is in direct conflict with that of Parham in almost every respect (R. 144). His testimony with reference to what transpired in his two conversations with Parham was corroborated in almost every respect by the testimony of Mary Criner, his wife (R. 146).

Petitioners assign as error the holding of the Supreme Court of Arkansas, to the effect that it was between his two trips to John Criner's house that he, Parham, authorized his bank to honor a draft drawn on him in payment for the royalty, if and when the draft was presented for payment. Now, Parham talked with Criner on two successive days. On the occasion of the first visit Criner stated that the Ritchies owned the land (R. 129) and that he rented from them (R. 136). He agreed to sign a disclaimer provided Parham could give him assurance the Ritchies would permit him to continue to reside on the land. A careful reading of Parham's testimony at pages 129 and 130 of the transcript of the record herein shows it was after this first conversation that Parham returned to Magnolia and authorized his bank to honor the draft for the purchase price of the royalty. Petitioners, however, argue that it was after the second conversation when Criner refused to sign a disclaimer that Parham returned home and told his banker to honor the draft. With this view of the evidence we most certainly do not agree and neither did the Supreme Court of Arkansas. The testimony of Parham extends from page 128 to page 137 of the transcript. No mention was made by Parham of a second conversation with Criner until page 133 of the transcript is reached. At pages 129 and 130 Parham is relating what occurred on his first visit. As it was not until several pages later on

in the transcript that any reference was made to a second visit, it logically follows that Parham's statement, "After leaving there I went home and instructed the bank to pay the draft" (R. 130) refers to the first visit. This must be the correct view for up until that time in his testimony Parham had referred only to the conversation that took place his first visit.

At the conclusion of his testimony relating to the second visit, and after stating that Criner would not sign, Parham added, "That is all I did about it" (R. 134). Construing the word "it" to mean "transaction," and it is submitted that from the context the word could refer to nothing else, Parham meant that from and after that moment (the second visit) he did nothing else in regard to the royalty transaction.

It is obvious from the foregoing that there is an abundance of testimony in the record to support the holding of both of the state courts that V. S. Parham and his grantees, Respondents herein, were innocent purchasers for value without notice and therefore entitled to protection. Pope's Digest of Arkansas Statutes Section 1847; *White* v. *Moffett*, 108 Ark. 490, 158 S. W. 505.

Petitioners argue that V. S. Parham did not rely upon the disclaimer and state the fact that Parham sought out Criner and talked with him about the character of Criner's possession, is proof that there was no reliance. Parham had been informed that John Criner was in possession of this land. The Arkansas Supreme Court has often held that a purchaser must seek out an occupant to learn the nature of his claim, otherwise, the law makes him take notice thereof; *Brewer* v. *Yancey*, 169 Ark. 816, 277 S. W. 11; *Temple* v. *Tobias*, 186 Ark. 851, 56 S. W. (2d) 585. But seek out John Criner is precisely what Parham did.

It is submitted that under the circumstances, Parham made such inquiries as an ordinary prudent man would have made when faced with the fact that John Criner was in possession of the land. For the purpose of determining whether he was an innocent purchaser, Parham was certainly entitled to rely upon the affidavit of disclaimer (R. 156) signed by John Criner. Any reasonable man would attach some verity to it. But aside from the disclaimer, Parham went to Criner himself. Criner informed him that the land was owned by, and that he rented it from, the heirs of George Ritchie (R. 129 and R. 136). In effect, Criner confirmed the statements contained in the disclaimer he had made seven years previously. Parham then, after this first visit to Criner was justified in returning to Magnolia and authorizing his bank to honor the draft for the royalty. He was an innocent purchaser without notice and should be protected. In the words of the Chancellor, "They did everything they could" (R. 155) to ascertain the interest of Criner and to comply with the duty of inquiry thrust upon them by reason of Criner's possession.

The sixth, seventh and eighth Specification of Errors in Petitioners' brief are to the effect that the Supreme Court of Arkansas erred in holding that John H. and Mary E. Criner were estopped. Petitioners further state, on the assumption that John Criner was estopped, that Mary Criner neither signed nor said anything and that to hold her estopped amounted to a deprivation of rights guaranteed her under the homestead and dower statute of the State of Arkansas.

The answer to Petitioners' contention is that there was no such holding. The decision of neither the Ouachita Chancery Court nor the Supreme Court of Arkansas was based on the theory of estoppel. The word estoppel was not mentioned in the opinion of either of the state courts.

The opinion of the Chancellor (R. 150) clearly shows he granted Respondents the relief they prayed for on the theory of innocent purchaser under the Arkansas recording statute (Pope's Digest Section 1847) and the doctrine announced in the case of *White* v. *Moffett*, 108 Ark. 490, 158 S. W. 505. A careful reading of the opinion of the Chief Justice shows that the Supreme Court of Arkansas merely affirmed the decision of the lower court.

Even though Petitioners have misconstrued the holding of the state courts, it might be well to discuss for a moment the rights of homestead and dower. Under the theory advanced by Petitioners, one could never be held an innocent purchaser of a tract of land occupied by a married man, or to which a married man had an unrecorded deed, for to so hold one to be an innocent purchaser, would deprive the wife of her rights of dower and/or homestead. Such a theory is preposterous and unheard of for it would completely nullify all recording statutes. Furthermore, this court has held that it has no jurisdiction to review a decision by a state court where the only question involved is the conformity of a state statute with the state constitution. *Lepper* v. *Texas*, 139 U. S. 462, 35 L. Ed. 225.

In connection with the discussion of the homestead right, counsel for Petitioners cite two Arkansas cases (*Scoggin* v. *Hudgins*, 78 Ark. 531 and *Taylor* v. *Greene*, 186 Ark. 817) which they state are "the nearest approaches to an invasion of the homestead right that the Supreme Court of Arkansas has ever made". Counsel for Petitioners are certainly familiar with *Farmers Saving B. and L. Association* v. *Jones*, 68 Ark. 76, 56 S. W. 1062 and *Mason* v. *Dierks Lumber and Coal Company*, 94 Ark. 107, 1255 S. W. 656, for they were cited by Respondents when this case was argued in the Supreme Court of Arkansas. In the former case, it was held, quoting from the syllabus:

> "Where a defendant's sworn application for a loan on his lands stated that they were not his homestead, and that the loan would be made, if at all, with reliance on such statement, defendant was thereby estopped from denying an abandonment of the homestead on a foreclosure of the mortgage securing such loan, though his wife had not acknowledged, notwithstanding Act March 18, 1887, providing that no conveyance affecting the homestead shall be valid unless the wife joins in executing and acknowledging it, since such statute refers to the conveyance, and not the abandonment, of a homestead, which abandonment by the husband would be binding on the wife."

The Supreme Court of Arkansas held that the affidavit or sworn statement in writing was not a conveyance of the homestead and for that reason was not void because of nonjoinder by the wife. Thus, notwithstanding the homestead right asserted by Petitioners, it is obvious that the Supreme Court of Arkansas has subjected and can subject the homestead to a decree or judgment, even though the wife has neither signed nor said anything.

Petitioners next contend that the judgment of the state courts against them is arbitrary and capricious, that John H. and Mary Criner are Negroes and have been deprived of their property without due process of law and that there is no testimony in the record to sustain the holding of the courts. A careful reading of the Chancellor's opinion (R. 150), which was merely affirmed by the Supreme Court of Arkansas should be a sufficient answer to each of these contentions. Perhaps, however, it might be well to examine further each contention.

Contrary to the facts of *Saunders* v. *Shaw*, 244 U. S. 317, 61 L. Ed. 1163 cited by Petitioners, the testimony of John H. and Mary Criner, the Petitioners, was not excluded from the record. They had their day in court, were permitted to take the stand at any time and to build up a voluminous and

lengthy record. Nothing was excluded from the record. So that this court might readily ascertain this fact by reading the entire record, counsel for Respondents refused to stipulate but insisted on the complete record being brought up. Respondents also desired that this court have the opportunity of reading all of the testimony of John Criner. Let us look for a moment at a portion of John Criner's testimony. Prior to the date Parham took the witness stand, the attorney for Respondents (Interveners in the lower state court) in cross examining John Criner, pointed out Parham and Smead Stuart in the court room and asked Criner if he was acquainted with them. John Criner replied that he had never seen either man and in effect he denied that they had ever been to his house (R. 48). Only a moment later, on redirect examination, Criner faintly remembered that two men had come to his house (R. 48). Yet the next day of the trial and after Parham and Stuart testified, Criner on redirect examination, remembered very clearly in minute detail the conversations that occurred on the two visits of Parham and Stuart, and further testified that Mary Criner, his wife, Fred Criner, his son, and Bertha Criner, his daughter-in-law, were present and heard every word of the conversation (R. 145). The family, of course, corroborated John Criner's testimony in nearly every respect (R. 146-150).

In the face of such glaring inconsistencies in the testimony of John Criner, and the statements in the next preceding paragraph hereof is only one example, it is obvious there is no merit in the contention that the judgments of the state courts were arbitrary and capricious in that the testimony of John H. and Mary E. Criner was not believed. Naturally very little credibility, if any, could be attached to the testimony of witnesses who demonstrated such a reckless disregard for the truth, and this was no doubt in the mind of the Chancellor when he said in the course of his decision

that "I am taking into consideration the appearance and demeanor of the witnesses on the stand, and all that has happened in this trial——" (R. 151). At the same time, it should be remembered that the state courts apparently believed a portion of the testimony of John and Mary Criner for they held that the Criners as against the Ritchie heirs, had acquired good limitation title to the land and one-half the minerals thereunder. This in itself is a sufficient answer to the contention that the decision of the state court was arbitrary and capricious and that the Criners were discriminated against because they are negroes. There was no discrimination. The judgments of the state courts were not arbitrary and capricious. However, the Ritchie heirs, the plaintiffs in the Ouachita Chancery Court, used this same contention in their argument to the Arkansas Supreme Court and it is possible they still feel that they were discriminated against.

In the state courts, this case involved no more than the question of whether V. S. Parham and his grantees were innocent purchasers for value so as to come within the protection of the recording statutes (Pope's Digest of Arkansas Section 1847) and the doctrine announced by the Arkansas Supreme Court in the case of *White* v. *Moffett* 108 Ark. 490, 158 S. W. 505. The Supreme Court of Arkansas held that V. S. Parham and his grantees were innocent purchasers and therefore, entitled to protection. No federal question was involved. The lower court, proceeding entirely upon principles of general and local law, and giving all parties interested in the question an opportunity to be heard, decided Petitioners had no right to the one-half interest in the oil, gas and royalty awarded to Respondents. As was said by this court in *Tracy* v. *Ginzberg*, 205 U. S. 170, 51 L. Ed. 755:

> "The decision of a state court, involving nothing more than the ownership of property, with all parties

in interest before it, can not be regarded by the unsuccessful party as a deprivation of property without due process of law, simply because its effect is to deny his claim to own such property".

Moreover, the contentions of Petitioners simply boil down to the claim that the decision of the Supreme Court of Arkansas is erroneous, and no constitutional provision is violated by an erroneous decision of a state court. The state courts have supreme power to interpret written and unwritten laws of the state and an erroneous decision of the highest state court does not confer appellate jurisdiction on the U. S. Supreme Court. *Brinkerhoff-Faris Trust & Savings Co.* v. *Hill,* 281 U. S. 673, 74 L. ed. 1107; In the Matter of Eugene M. Converse 137 U. S. 624, 34 L. ed. 796; *Neblett* v. *Carpenter,* 305 U. S. 297, 83 L. ed. 183; *Chicago Life Ins. Co.* v. *Cherry,* 244 U. S. 25, 61 L. ed. 966; *Worchester County Trust Co.* v. *Riley,* 302 U. S. 292, 82 L. ed. 268; and *Bonner* v. *Gorman,* 213 U. S. 86, 53 L. ed. 709.

And finally we come to the point that the alleged federal question was not raised in time. Despite the fact that the Chancery Court held herein that Respondents were the owners of one-half of the oil, gas and mineral royalty, which holding was merely affirmed by the Arkansas Supreme Court, the record herein does not show that Petitioners claim that the holding of the Chancery Court presented any federal question or that they were denied any constitutional rights by its judgment. If the opinion of the Arkansas Supreme Court herein presents any federal question, obviously, the same questions were presented by the judgment by the Chancery Court. Yet, no attempt was made to inject any federal question in this case until the petition for rehearing was filed, which petition was promptly denied. It is well established that this court will not review the decision of a state Supreme Court when federal questions in a case are raised for the first time upon petition for rehearing to the

State Supreme Court. (*Rooker* v. *Fidelity Trust Co.*, 261 U. S. 114, 67 L. ed. 556; *Godchaux Co.* v. *Estopinal*, 251 U. S. 179, 64 L. ed. 213; and *McGarrity* v. *Bridge Comm.*, 292 U. S. 19, 78 L. ed. 1095). As was said by the court in *American Surety Co.* v. *Baldwin*, 287 U. S. 156, 77 L. ed. 231;

> This is not a case where, as in Saunders *v.* Shaw, 244 U. S. 317, 320, 61 L. ed. 1163, 1165, 37 S. Ct. 638, the federal claim arose from the unanticipated disposition of the case at the close of the proceedings in the state Supreme Court. Compare Ohio ex rel, Bryant *v.* Akron Metropolitan Park Dist. 281 U. S. 74, 79, 74, L. ed. 710, 715, 66 A.L.R. 1460, 50 S. Ct. 228. Nor is the federal claim based, as in Brinkerhoff-Faris Trust & Sav. Co. *v.* Hill, 281 U. S. 673, 74 L. ed. 1107, 1112, 50 S. Ct. 451, upon the unanticipated act of the state Supreme Court in giving to a statute a new construction which threatened rights under the Constitution. Compare Missouri ex rel. Missouri Ins. Co. *v.* Gehner, 281 U. S. 313, 320, 74 L. ed. 870, 875, 50 S. Ct. 326.

## Conclusion

In final analysis, in the case at bar the Supreme Court of Arkansas merely held that V. S. Parham and his grantees, Respondents herein, were innocent purchasers for value and applied the Arkansas law applicable thereto, and, such being the case, it's decision is not subject to review by this court.

Respectfully submitted,

C. W. McKay,
W. D. McKay,
E. M. Anderson,
*Counsel for Respondents.*

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